

## [HIGH COURT OF AUSTRALIA.]

DUNCAN . . . . . APPELLANT;  
 INFORMANT,  
 AND  
 DANIELS . . . . . RESPONDENT.  
 DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF  
 NEW SOUTH WALES.

*Sydney Corporation Amendment Act 1905 (N.S.W.), (No. 39 of 1905), secs. 2, 12\**  
 —“Hoarding,” “Wall,” meaning of—Brick wall of house—By-law—Special  
 leave to appeal.

H. C. OF A.  
 1908.

The word “wall” in the definition of the word “hoarding” in sec. 2 of the  
*Sydney Corporation Amendment Act 1905*, does not mean the wall of a house,  
 but means some independent or temporary structure.

MELBOURNE,  
 June 15.

Griffith C.J.,  
 Barton,  
 O'Connor and  
 Isaacs JJ.

Decision of Supreme Court of New South Wales : *Duncan v. Daniels*, (1908)  
 8 S.R. (N.S.W.), 237, approved, and special leave to appeal refused.

\*Sec. 2. “In this Act, unless the  
 context otherwise indicates,—

“‘Hoarding’ includes any hoard-  
 ing, post, frame, wall, or  
 structure used for the exhibi-  
 tion of placards, bills, or  
 advertisements.”

Sec. 12 (1). “In addition to the  
 powers conferred by the Principal Act,  
 the council may make by-laws—

(a) for the good government of the  
 city;

(b) for the regulation and control  
 of hoardings now or hereafter  
 to be erected in the city, and  
 of bills, placards, and adver-  
 tisements attached to or  
 painted on any such hoard-  
 ings;

(c) for preventing the erection or  
 use of any hoarding in the

city without the consent of  
 the council or the officers ap-  
 pointed by it;

(d) for the demolition and removal  
 by the council or any person  
 acting under its authority of  
 any hoarding now or hereafter  
 to be erected in the city, or of  
 any bill, placard, or advertise-  
 ment attached thereto or  
 painted thereon, which in the  
 opinion of the city surveyor  
 or other officer appointed by  
 the council in this behalf, is  
 or may be objectionable, un-  
 sightly, or dangerous, or of  
 any hoarding which shall be  
 erected in the city without  
 the consent of the council or  
 of the officer appointed by it  
 in this behalf, and for the re-  
 covery of the expense thereof.”



H. C. OF A. APPLICATION for special leave to appeal.

1908.

DUNCAN  
v.  
DANIELS.

At the Central Police Court, Sydney, on 3rd April 1908, an information was heard by which John Duncan charged that J. Daniels did, on 23rd March 1908, "without a licence from the Municipal Council of Sydney authorizing him so to do signed by the town clerk, use a hoarding, to wit, the side and rear walls used for the exhibition of advertisements, which walls were part of a building situate corner of Bourke and Cleveland Streets in the City of Sydney aforesaid contrary to the by-law in that case made and provided."

The evidence showed that certain advertisements were painted by the defendant on the side and rear walls, which were of brick, of the house mentioned in the information.

Certain by-laws were made by the Municipal Council of Sydney on 4th September 1907 under the provisions of the *Sydney Corporation Act* 1902 and the *Sydney Corporation Amendment Act* 1905, and were published in the *Government Gazette* on the same day, of which the following are material:—

"672. No person shall, within the City, after the expiration of one month from the publication of these by-laws in the *Gazette*, use any hoarding without a licence from the Council authorizing him so to do, signed by the Town Clerk."

"681. If any hoarding shall be erected in the City without the consent of the Council first had and obtained, or if any hoarding now erected or hereafter to be erected in the City, or any advertisement attached or affixed thereto or painted thereon shall, in the opinion of the City Surveyor, be objectionable, unsightly, or dangerous, any person acting under the authority of the Council may demolish and remove any such hoarding or advertisement, and the expense of such demolition and removal shall be paid to the Council on demand by the person causing such hoarding to be erected or such advertisement to be attached, affixed, or painted, as the case may be."

The Stipendiary Magistrate, having dismissed the information, at the request of the complainant stated a case for the opinion of the Supreme Court, the question being whether his determination was erroneous in point of law.

The case was heard by the Full Court, who held that

the Magistrate was right in his determination: *Duncan v. Daniels* (1). H. C. OF A. 1908.

The complainant now applied to the High Court for special leave to appeal from the decision of the Supreme Court.

*DUNCAN*  
*v.*  
*DANIELS.*

*Macfarlan*, in support of the application. The definition of the word "hoarding" in sec. 2 of the *Sydney Corporation Amendment Act* 1905 is that it includes, amongst other things, "wall," and there is no reason why the word "wall" should be limited to a wall erected for the purpose of having advertisements placed upon it, or to a temporary wall.

*Per curiam*. There is no reason for disagreeing with the judgment of the majority of the Full Court. We think their decision is right, and leave to appeal will be refused.

*Special leave to appeal refused.*

Solicitors, for applicant, *Lynch & McDonald*, for *Dawson, Waldron & Glover*, Sydney.

B. L.

(1) (1908) 8 S.R. (N.S.W.), 237.